

1 JUDGE SIPPEL: Mr. Catalano.

2 MR. CATALANO: The only point I
3 would make on the valuation issue is the
4 Commission has, and the Bureau has, the
5 opportunity to participate in the bankruptcy
6 on the valuation issue, and that is the very
7 issue that is before the court in that
8 proceeding.

9 JUDGE SIPPEL: I've never heard of
10 that. The Commission -- Has the commission
11 ever participated in a bankruptcy proceeding?

12 MR. CATALANO: They have a right
13 as a party to enter, Your Honor.

14 JUDGE SIPPEL: As a party?

15 MR. CATALANO: Or through the
16 Justice Department. They certainly have an
17 opportunity to address the valuation issue in
18 that proceeding.

19 JUDGE SIPPEL: It sounds like the
20 President is going to have all the attorneys
21 in the government running around looking for
22 fraud. I just think that is carrying it a

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1 little further than it is intended to go, but
2 I don't really have the answer for you either.
3 But I think I understand -- I understand where
4 the Bureau is coming from, and I am inclined
5 to be of the same mind, that I want to see --
6 I want the Bureau to have the opportunity to
7 examine this plan that the court is going to
8 approve or has approved before I send it out
9 of here up to WB, and I tell WB it looks like
10 -- is this qualified for Second Thursday? You
11 know, you make the determination, and you are
12 sort of nodding. I don't know if you are
13 approving that, but you understand that.

14 MR. CATALANO: I understand your
15 point, Your Honor.

16 JUDGE SIPPEL: I am not trying to
17 be an intermediary. I am not trying to slow
18 the process down, but on the other hand --
19 Well, on the other hand, I have said as much
20 as I can possibly say on this right now.

21 So having said all that, Mr.
22 Miller?

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1 MR. KELLER: Keller.

2 JUDGE SIPPEL: Keller, I'm sorry.

3 MR. KELLER: I think Mr. Miller is
4 on the phone.

5 JUDGE SIPPEL: Mr. Miller, I can't
6 keep you out of my mind.

7 MR. MILLER: I appreciate that,
8 Your Honor.

9 JUDGE SIPPEL: And I haven't
10 forgotten you either, Mr. Havens. Can you
11 give us a date or approximate date or a week?

12 MR. KELLER: Before that, let me
13 just say one thing.

14 JUDGE SIPPEL: On the
15 reorganization.

16 MR. KELLER: That was one of the
17 two things I was going to address.

18 JUDGE SIPPEL: Right.

19 MR. KELLER: You have said a
20 couple of times WB, and that is fine, but I
21 think, actually, this will have to go to the
22 Commission, because this will involve --

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1 Because it is a Commission level designation
2 order, I am not sure that the Wireless Bureau
3 has delegated authority to address it, but
4 that is a minor point. Whatever it is, it is.

5 JUDGE SIPPEL: I want to send it
6 to the right address.

7 MR. KELLER: I think it is to the
8 Commission unless the Commission acts to
9 somehow delegate authority to the Wireless
10 Bureau to act in this particular matter.

11 JUDGE SIPPEL: Well, we will get
12 to that.

13 MR. KELLER: So we will get to
14 that.

15 Until yesterday -- Until yesterday
16 at about 7:30 p.m., I fully anticipated coming
17 in here and saying that the reorganization
18 plan is going to be filed on Monday and that
19 we would be filing our Second Thursday showing
20 within a week to two weeks after that.

21 I got word from Bankruptcy counsel
22 last evening that he had just received a

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1 letter from the unsecured creditors committee
2 and that he was momentarily expecting a
3 similar letter from the secured creditors
4 group urging him to seek an extension of time
5 to file the reorganization plan.

6 The contours that I laid out of
7 this plan whereby the secured creditors are
8 going to take the assets, etcetera --
9 apparently, everybody is on board with that
10 between these various creditors. There are
11 some issues, as I understand, on the fine
12 points of it.

13 I think it largely has to do with
14 whose claims have what priority in terms of
15 how the money gets distributed, etcetera,
16 because again the secured creditors are also
17 putting up some cash to take care of the
18 claims and the expenses.

19 So they urged him to seek an
20 extension of 30 days to file the report. He
21 said he feels like he has to honor that
22 request, but we anticipate -- that group would

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1 be filing the plan sooner than 30 days, but
2 that is where that stands.

3 That just occurred last night, and
4 this is not something that Maritime is itself
5 requesting. As I say, we are prepared to go
6 forward, but until the secured creditors group
7 and the unsecured creditors committee sign off
8 on the dotted line of all the details, we need
9 that in writing to put in the reorganization
10 plan so we can then move forward.

11 JUDGE SIPPPEL: Well, let me ask
12 you this. Do you have a reorganization plan
13 without the final final from the secured -- Do
14 you have that prepared, let me say, in draft
15 form to the point where you could share it
16 with us?

17 MR. KELLER: Number one -- I can
18 answer the second question easier, but number
19 one, I don't know the answer to that. I am
20 assuming that there is a draft going on. But
21 number two, I don't think it is anything we
22 could share with you or that would be

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1 relevant, because until this plan on how we
2 are going to deal with these assets -- that is
3 the whole critical thing.

4 First of all, that is going to be
5 the centerpiece, the most critical factor of
6 both the reorganization plan as well as the
7 Second Thursday showing. So even assuming I
8 had a draft and could show it, I don't have.
9 This is something done by bankruptcy people,
10 but even assuming I had a draft and could show
11 it to you, it would be missing the very
12 element that is relevant here, and that is how
13 are you going to dispose of all these assets,
14 and does that comply with Second Thursday.

15 So as I say, we are planning to
16 move forward, and we are ready to move forward
17 as quickly as possibly, and the only reason he
18 is going to possibly be seeking an extension
19 at all is because these two creditor groups
20 are insisting on it.

21 They both say we have a deal in
22 concept, but it is just the details that they

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1 are working out.

2 JUDGE SIPPEL: You are telling me
3 two different things. I mean, the details are
4 critical to all this. So you really can't
5 make a representation that Maritime is ready
6 to go; they just got to get these people to
7 sign off on it.

8 MR. KELLER: Again, I believe the
9 details have to do with the dickering over
10 priorities of claims. It is not going to
11 change the overall contours that I have
12 outlined. In other words, as I said, money is
13 going to be made available to pay unsecured
14 creditors' claims and administrative expenses,
15 etcetera.

16 The question there is just who is
17 line where. I think that is what they are
18 fighting over right now.

19 JUDGE SIPPEL: So the valuation
20 issue as far as what has been put before the
21 court or what will be put is already -- that
22 is already finished? Nothing more to do on

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1 that.

2 MR. KELLER: I don't know. I
3 don't know what the court is going to
4 consider.

5 JUDGE SIPPEL: Well, no, I am not
6 talking about from the court's end. I am
7 talking about of these creditor groups that
8 you are talking about. They are not concerned
9 about the valuation. It is a question of
10 this--

11 MR. KELLER: I am not sure that --
12 There will be a hearing, presumably, and I am
13 not sure. As Mr. Catalano said, I assume the
14 court will address the valuation issue to the
15 extent that it is relevant. I am not sure how
16 relevant it is beyond showing good faith.

17 The whole issue here is the idea
18 of the argument that, if the value somehow
19 exceeds the amount of the claims, that that
20 somehow renders Second Thursday to be
21 inapplicable.

22 I guess the most time we can see

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1 is I can imagine circumstances in which that
2 might be a relevant question, but I strongly
3 take issue with the fact that, simply because
4 there may be an excess of value over the
5 claims, that that renders Second Thursday
6 inapplicable. I don't buy that at all,
7 because you to weigh, on the one hand, first
8 of all, who benefits from that excess value,
9 number one. Steps are going to be taken to
10 make sure it is not the alleged wrongdoers.

11 Then number two, given the
12 purposes of Second Thursday, what is the
13 alternative? Is the alternative because, all
14 right, you have \$10 million in claims, but
15 because the assets they are checking are worth
16 \$12 million, we are going to disallow Second
17 Thursday and, therefore, you don't get your
18 \$10 million either? That just doesn't ring
19 out with me.

20 Certainly, again, I think is an
21 argument that will be briefed in the context
22 of the Second Thursday petition. We are going

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1 to file a request for Second Thursday relief.
2 I am sure the Bureau is going to oppose it.
3 The Bureau will presumably make this kind of
4 an argument, and we will certainly address it.

5 JUDGE SIPPEL: Well, I think there
6 is rule over reason here. If that excess,
7 whatever it is, the 2,000, the 20,000 excess,
8 is not adequately accounted for in terms of
9 that the DePriests can't get a piece of it, I
10 don't think that the Second Thursday is going
11 to be approved.

12 So if you have got it nailed down
13 to the point that, one, the valuation is
14 accurate --

15 MR. KELLER: Well, how would they
16 get it?

17 JUDGE SIPPEL: I don't know. That
18 is the mystery.

19 MR. KELLER: Well, now. As I say,
20 if there is no proceeds from the assets that
21 go into Maritime --

22 JUDGE SIPPEL: That is right. If

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1 there is an excess, where does it go, and who
2 is to say that where it goes, entity or
3 person, is not going to turn around and have
4 some kind of relationship with the DePriests
5 that is going to move the money back again.
6 We don't know that. I don't think it is going
7 to happen, but there is a way to -- Isn't
8 there a way to tie these things up airtight so
9 that they can't get at it?

10 MR. KELLER: You put any necessary
11 conditions on the --

12 JUDGE SIPPEL: There you go. We
13 don't know. We haven't seen anything.

14 MR. KELLER: First of all, there
15 is no -- We are not talking about any cash
16 here. We are talking about an alleged
17 possible, theoretical, excess in value. I
18 guaranty you this, that if the Second Thursday
19 plan is approved and if the reorganization
20 plan is approved, and whoever ends up with the
21 licenses at that point, they are going to be
22 worth more then than they are now.

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1 Right now, the licenses are worth
2 very little, simply because of all this
3 uncertainty and litigation and the threat of
4 revocation, the bankruptcy, everything else.
5 But the point is steps are taken already, and
6 it is outlined, so that there is going to be
7 no proceeds from the sales going to even
8 Maritime, much less the DePriests.

9 I am sure that the secured
10 creditors group will have no problem accepting
11 the assignment of licenses, subject to the
12 condition that neither the licenses nor any
13 proceeds from the licenses will be conveyed to
14 the DePriests, nor will the DePriests be
15 involved in any way in the future operations
16 of these facilities.

17 MR. HAVENS: -- windfall --

18 JUDGE SIPPEL: Wait just a second,
19 who is this?

20 MR. HAVENS: This is Warren
21 Havens, Your Honor.

22 JUDGE SIPPEL: Wait a minute. I

1 want to address what was just said. It is a
2 question that we just have to wait and see.
3 We have to wait and see what the plan is that
4 gets filed. We have to wait and see what the
5 court does with the plan. That is where we
6 are.

7 MR. HAVENS: Your Honor, is there
8 a point where I could say --

9 JUDGE SIPPEL: Yes, I am going to
10 get to you, but I am going to get to you in
11 the order of which I want to get this record
12 established. So hold on. You close to being
13 there.

14 MR. HAVENS: Thank you.

15 MR. KELLER: I don't think we need
16 to wait to present the detailed plan to you
17 for the court to rule.

18 JUDGE SIPPEL: No.

19 MR. KELLER: I simply need to wait
20 until the plan is presented to the court. At
21 that point, I can present the detailed plan,
22 and we will certainly address these kinds of

1 concerns in what we lay before you.

2 JUDGE SIPPEL: Well, what I am
3 saying is the Bureau is going to get -- and of
4 course, the other parties, to the extent that
5 they are participating -- The Bureau is going
6 to get two things. They are going to get the
7 plan that you file -- that your client files
8 with the court, the Bankruptcy Court, and then
9 they are going to get the whole plan that the
10 Bankruptcy Court approves or disapproves.

11 MR. KELLER: Yes, eventually.

12 JUDGE SIPPEL: And until we get
13 both of those reports, the case can't really
14 move from this case someplace else, wherever
15 that may be. You agree with that?

16 MS. KANE: We would agree with
17 that, Your Honor.

18 JUDGE SIPPEL: Now what are they
19 going to do with the information in the Bureau
20 when they get it? We will get to that when we
21 have to get to it, but right now we don't have
22 anything really to work with. Is that right?

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1 MS. KANE: That is our concern,
2 Your Honor. We would take issue with the fact
3 that, if there is excess value, that Second
4 Thursday is not designed to simply transfer
5 licenses while a hearing is pending concerning
6 the issues regarding those licenses.

7 So if there is a transfer going on
8 essentially through this bankruptcy
9 machination of excess value of these licenses,
10 that would not necessarily be something that
11 should be approved by Second Thursday or
12 achieved through Second Thursday, because it
13 is an exception to the standard process, which
14 is you go through the Wireless Bureau except
15 when you have a hearing pending concerning
16 whether those licenses were actually properly
17 held by the person who is trying to transfer
18 them.

19 JUDGE SIPPEL: I think that --
20 Certainly, I am with you on that. I think Mr.
21 Keller understands that, but it doesn't change
22 anything as far as the status of this case is

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1 concerned.

2 MS. KANE: We would agree, Your
3 Honor, that we would need all of that
4 information and any valuation that the
5 Bankruptcy Court puts into play before we
6 could determine whether or not this proceeding
7 goes on one issue or all issues.

8 JUDGE SIPPEL: Correct. But we
9 can still proceed -- All right. Now having
10 said all that -- and, Mr. Havens, the next one
11 is you. Having said all of that, we can still
12 work on the litigation of the construction
13 issue.

14 MS. KANE: We would agree with
15 that, Your Honor.

16 JUDGE SIPPEL: Issue A, I guess.
17 Correct?

18 MS. KANE: Issue G.

19 JUDGE SIPPEL: Oh, G, okay. Mr.
20 Havens?

21 MR. HAVENS: Thank you. Two
22 points I would appreciate making. In the

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1 bankruptcy at the first hearing, as one of the
2 attorneys said -- I think it was Mr. Keller --
3 the court did approve a group of the APAs. My
4 companies have appealed that on different
5 bases, including valuation.

6 There is the second hearing coming
7 up on February 2nd. We have an expert
8 retained. He will be testifying as to the
9 value, based on hard numbers that come out of
10 my company's fair market sales of comparable
11 licenses and other information. That, of
12 course, will be available in this hearing. It
13 will be highly confidential information, but
14 marked in that way.

15 Let's see. I took a few notes
16 here. In this upcoming hearing and in the
17 first hearing, Maritime did not designate and
18 bring a qualified expert in valuation. They
19 had the opportunity in this second hearing.
20 They told our counsel they would designate a
21 party. Our counsel was ready to do the
22 deposition. They were told yesterday Maritime

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1 is not bringing an expert for the purpose of
2 valuation.

3 In my view -- and I have been in
4 this wireless business day in and day out for
5 a couple of decades, including AMTS -- anyone
6 could crunch the numbers just in the total
7 amount of megahertz tops that Maritime has in
8 their licenses that are not in these APAs,
9 even if all of the APAs are approved. It is
10 the vast majority. I believe it is over 90
11 percent.

12 Now to conclude that that 90
13 percent has virtually no value will never
14 work. I think that will be proven without a
15 doubt. I believe the Bankruptcy Court will
16 find that.

17 For the creditors to get that,
18 they are not operators. They don't want that
19 spectrum to operate. They will sell the
20 spectrum. They will get it at a nominal
21 price. They will sell it and make a windfall.
22 I agree that that is outside of the purposes

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1 of Second Thursday. It is not to enrich
2 creditors, even if they are interested.

3 Just one other point, and perhaps
4 I am wrong procedurally on this: In Second
5 Thursday there are issues of who are the
6 wrongdoers. That is a fact matter. You can't
7 simply admit to a few parties being wrongdoers
8 and assume everyone else in the bankruptcy,
9 including the creditors that have certain
10 relations with the DePriests, are all
11 innocent.

12 Who are the innocent creditors,
13 and the quantity of their debt that is
14 innocent? That is a fact matter. It has to
15 be tested and proven up in one process or
16 another. It seems to me, that could go on in
17 this hearing.

18 There are issues in this hearing
19 which are parallel to those matters. Who are
20 the wrongdoers in Maritime, and by determining
21 that, at least that would be one step in
22 determining who are the innocent creditors.

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1 I don't see any reason why all the
2 issues can't go forward in this hearing,
3 particularly if they are going to assert
4 Second Thursday, because the fact finding in
5 the hearing contributes toward proper
6 determinations of those core issues in Second
7 Thursday.

8 JUDGE SIPPEL: Well, the
9 Commission set this case and the hearing on
10 certain issues, and those are the issues that
11 we are going forward on. There is a process
12 for adding new issues. You have already gone
13 down that road, and without making anything
14 other than that statement to you, we are here
15 to accomplish a certain amount of business,
16 and I am here to keep this case on some kind
17 of a schedule, and I am not looking to do work
18 for the Bankruptcy Court. So --

19 MR. HAVENS: I meant to limit that
20 last comment to the FCC Second Thursday
21 components in which -- you know, who are the
22 wrongdoers and who are the innocent creditors

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1 -- it is an FCC determination that the
2 Bankruptcy Court won't make, because Second
3 Thursday is an FCC doctrine.

4 JUDGE SIPPEL: I understand that.
5 I understand that. What I am saying is that
6 you just can't create fact issues. We are not
7 looking for rabbit holes. We got enough of
8 them.

9 MR. HAVENS: What I meant, Your
10 Honor, is there are issues in the hearing
11 designation order as to the violation by
12 certain parties, Sandra/Donald DePriest, which
13 is a factual determination that has to be
14 made, both for Second Thursday. If Second
15 Thursday is the office that goes forward and
16 delays the hearing or suspends the hearing or
17 if the hearing goes forward, that matter seems
18 to be the same in both cases. But the hearing
19 is the fact finding process.

20 You know, the Wireless Bureau --
21 correct me if I am wrong -- does not do fact
22 finding hearings. So it seems to me that this

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1 hearing could go forward on the issue of the
2 wrongdoing, because that is a component of
3 Second Thursday.

4 JUDGE SIPPEL: This case is going
5 to go forward on the factual issues that I
6 approve. You should really take this up with
7 your new lawyer, if you want to keep talking
8 about it, but I have made my determination.
9 You've got 12 days. It sounds like you have
10 got some good lawyers down there in
11 Mississippi. It seems to me, you know
12 lawyers, but I am not going to talk about this
13 with you any further until after the 12 days
14 is over.

15 Now I want to move on now to Issue
16 G, the discovery on Issue G. I'm sorry, Mr.
17 Richards?

18 MR. RICHARDS: Your Honor, if I
19 can just briefly repeat what I raised at the
20 previous hearing, and that is the concern of
21 the Applicant companies in the timing of their
22 processing of their applications. Some of

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1 these applications have now been pending for
2 several years.

3 To make sure I understand Mr.
4 Keller's point, do I understand you to say
5 that the organization plan is going to be
6 filed within a month, and then two weeks
7 thereafter you will file the Second Thursday?

8 MR. KELLER: Two weeks at the
9 longest, yes, 10 days to two weeks.

10 MR. RICHARDS: Your Honor, I would
11 again repeat what we discussed earlier. I
12 don't understand the public interest in
13 holding these frequencies from oil and gas
14 companies, electric utilities, and railroads,
15 who need them. What money has been paid to
16 MCLM is going to be divided up by the
17 Bankruptcy Court. Any new money that would be
18 paid could be put into an escrow account,
19 which is what we suggested on our
20 reconsideration of the HDO, which is still
21 pending this much longer afterward.

22 Once it is escrowed, it can be

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1 dealt with, however this hearing is resolved.
2 The Judge can direct it be paid over to be
3 paid, but these companies need frequencies.

4 We have got an oil and gas company
5 client that is putting in a pipeline. They
6 can't get other frequencies. They need these
7 frequencies. They are being held up. There
8 is no allegation in the HDO that they have
9 engaged in any wrongdoing or that they have
10 any particular knowledge about this case. It
11 is my view, they acted in compete good faith,
12 and they are still waiting.

13 JUDGE SIPPEL: I am hearing what
14 you say, but I don't see there is anything
15 that I can do. What can I do? What do you
16 want me to do?

17 MR. RICHARDS: I would like these
18 applications to be recognized by the
19 Commission for what they are. If the Judge
20 could file something with the Commission that
21 would clarify the authority that you might
22 have to process these applications within the

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